


EX PARTE OR LATE FILE

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**VIA HAND DELIVERY**

June 24, 2004

**EX PARTE**

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**JUN 24 2004**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Room TW-A325  
Washington, DC 20554


FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Oral *Ex Parte* Presentation – CC Docket Nos. 96-98 and 99-68

Dear Ms. Dortch:

On June 23, 2004, Steven Teplitz, Vice President and Associate General Counsel, Time Warner Inc., Sean P. Nehill and the undersigned, both of Lampert & O'Connor, P.C., met with Christopher Libertelli, Aaron Goldberger and Cory Jackson, all of the Office of Chairman Michael Powell, regarding the above referenced dockets.

Specifically, we discussed the pending remand proceeding regarding the order on intercarrier compensation for ISP-bound traffic and urged the FCC to hold that the plain language of Section 251(b)(5) applies to ISP-bound traffic, reaffirming a prior FCC finding that ISP traffic should be treated like other traffic since the costs of termination are the same (ISP Remand Order ¶¶ 90-94). Time Warner also noted that the concerns about arbitrage that in large part spurred the FCC's decisions in this area are no longer as pressing as they once appeared, especially since dial-up access is decreasing not increasing. Time Warner also explained that nothing in the language of Section 251(b)(5) or the relevant legislative history limits reciprocal compensation solely to "local" traffic and noted that the ISP Remand Order (¶ 46) expressly altered the FCC's previous decision in this regard. In any case, ISP-bound traffic is treated as local for myriad purposes, including jurisdictional separations, further supporting a decision to treat ISP-bound traffic as within the scope of Section 251(b)(5). Finally, Time Warner stressed that contrary to the position proffered by some of the ILECs, ISP-bound traffic is not interexchange traffic and should not be treated as such, noting that the FCC found in 1997 that ISPs do not use the network in the same manner as interexchange carriers.

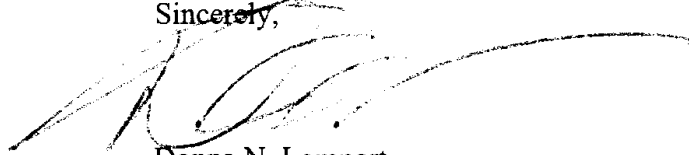
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Pursuant to Section 1.1206(b) of the Commission's rules, two copies of this letter are being provided to you for inclusion in the public record of each of the above-captioned proceedings. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Donna N. Lampert  
Counsel for Time Warner Inc.

cc: Christopher Libertelli  
Aaron Goldberger  
Cory Jackson